Sofco, Inc. *and* Local 624, United Paperworkers International Union, AFL-CIO. Case 3-CA-10641

26 October 1983

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS HUNTER AND DENNIS

On 30 September 1982 Administrative Law Judge Phil W. Saunders issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions only to the extent consistent with this Decision and Order.

The judge found that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize Local 624, United Paperworkers International Union, AFL-CIO (the Union), as the collective-bargaining representative of its employees. In so doing, he found the testimony of the Respondent's plant manager, Richard Almy, concerning the employees' opposition to continued union representation insufficient to warrant a finding that the Respondent had a "good-faith and reasonably grounded doubt of the union's continued majority status."[2] We disagree and, for the reasons set forth below, we shall dismiss the complaint.

Almy testified that from June 1981,[3] when the employees became aware that Stevens & Thompson was selling its Mechanicville facility to the Respondent, until the consummation of the sale in late August he had a number of conversations with employees concerning the Union's status. He testified that during this period virtually all of the approximately 27 employees had approached him at one time or another and brought up the subject of the Union. According to Almy, every employee, with the exception of union steward Lila Birdsinger, expressed a desire to "do away with the union, get away from the union and be on our own." When pressed for details of specific conversations, Almy testified that employee Perry told him that "it won't be long now and we can get rid of this lousy union"; employee Yusaitis asked him what he thought about the Union and then said, "[W]e'd be better off without the Union"; employee Conrad, in reference to the sale and its effect on union representation, said, "[W]e only got x amount of days to go and we'll be on our own"; and employees Biss and Morey mentioned to Almy that there were only "x amount of days till the end of the union." Almy further testified that the other employees expressed similar sentiments.

Almy also testified that during this period a number of signs were posted in the plant which referred to the Union. According to him, one referred to the "count down" and stated "30 days to go [or] 25 days to go til the end of the Union." Another had a "picture of a heart and dagger" with a reference to the Union. Finally, Almy testified that, on a number of occasions during this June through August period, employees with complaints attempted to circumvent union steward Birdsinger.[4]

The judge rejected this testimony on the grounds that the antiunion sentiments began after the Respondent's chief representative and consultant, Harold Brown, had told the employees that the Respondent felt it did not need a union and that the Respondent produced no corroborating employee testimony concerning the alleged antiunion remarks. He further found that there was no evidence of any "spontaneous employee attempt to dislodge the Union," noting that neither the signs allegedly posted in the plant nor Birdsinger's alleged problems as shop steward "rose to the level of such movement." He also noted that Almy's testimony as to the antiunion signs was also not corroborated.

As the Board stated over 30 years ago in *Celanese Corp.*:[5]

> By its very nature, the issue of whether an employer has questioned a union's majority in good faith cannot be resolved by resort to any simple formula. It can only be answered in the light of the totality of all the circumstances involved in a particular case.

Thus, even when a particular factor considered alone would be insufficient to support a good-faith

[1] The Respondent and the General Counsel have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] *Terrell Machine Co.*, 173 NLRB 1480, 1481 (1969), enfd. 427 F.2d 1088 (4th Cir. 1970).

[3] All dates refer to 1981.

[4] Almy also testified that Birdsinger "was getting insults" from employees expressing dissatisfaction with the Union.

The Respondent's consultant and chief representative, Harold Brown, also testified that several employees had expressed dissatisfaction with the Union directly to him. Specifically, Brown testified that, on one occasion as he was walking past the printer, one employee told him that "I sure hope you guys help us in getting out from under this union."

[5] 95 NLRB 664, 673 (1951).

doubt of a union's majority status, the "cumulative force of the combination of factors" may be adequate to support such a doubt.[6] In this regard, we note that a respondent does not bear the burden of proving that an actual numerical majority opposes the union.[7] However, it must demonstrate that it had objective reasons for doubting the union's majority status.[8]

Contrary to the judge, we find that the testimony of Plant Manager Almy, which was not contradicted by any of the General Counsel's witnesses, constituted sufficient objective evidence to support a good-faith and reasonably grounded doubt of the Union's continued majority status. Almy testified that, during the period from June through August 1981, every employee with the exception of union steward Birdsinger expressed opposition to the Union and saw the sale of Stevens & Thompson as an opportunity to rid themselves of the Union. Almy supported this assertion with testimony concerning specific conversations with a number of individuals, none of whom testified at the hearing.[9] Such statements by employees are "objective, identifiable acts" on which the Respondent was entitled to rely, and they can form the basis for an employer's doubt.[10] These statements are especially reliable here when considered in light of the other uncontradicted evidence tending to corroborate the employees' apparent disaffection with the Union: the proliferation of antiunion signs in the plant and the employees' hostility toward union steward Birdsinger.

In our opinion the evidence, uncontradicted by any of the General Counsel's witnesses, was sufficient to support a good-faith, reasonably grounded doubt of the Union's continued majority status at the time the Union first demanded recognition on 1 September.[11] Thereafter, the Respondent became aware of further objective evidence of the Union's lack of majority status when in early October Brown saw a petition dated 28 September, signed by all but one of the Respondent's employees, stating that they wished to "disassociate ourselves with [sic] Local 624 . . . ." Thus, its continued doubt of the Union's majority status after that date was reasonably grounded and in good faith.

Since the Respondent had a good-faith and reasonably grounded doubt of the Union's continued majority status as of 1 September, it did not violate Section 8(a)(5) and (1) of the Act by refusing to recognize and bargain with the Union even after successorship status attached on 8 September.[12] Accordingly, we shall dismiss the complaint.

ORDER

The complaint is dismissed.

[6] *Golden State Habilitation Convalescent Center v. NLRB*, 566 F.2d 77, 80 (9th Cir. 1977), denying enf. of 224 NLRB 1618 (1976); see also *National Cash Register Co. v. NLRB*, 494 F.2d 189 (8th Cir. 1974).

[7] *Laystrom Mfg. Co.*, 151 NLRB 1482 (1965), enf. denied on other grounds 359 F.2d 799 (7th Cir. 1966); see also *NLRB v. Randle-Eastern Ambulance Service*, 584 F.2d 720 (5th Cir. 1978).

[8] *Laystrom Mfg. Co.*, supra.

[9] The Respondent was not required to elicit such testimony directly from the employees involved, as implied by the Administrative Law Judge. See, e.g., *Naylor, Type & Mats*, 233 NLRB 105 (1977). Nor is a "spontaneous attempt" to dislodge the union a prerequisite for entertaining a good-faith, reasonably grounded doubt, as implied by the judge.

[10] *NLRB v. Middleboro Fire Apparatus*, 590 F.2d 4 (1st Cir. 1978); *Zim's IGA Foodliner v. NLRB*, 495 F.2d 1131 (7th Cir. 1974); *Naylor, Type & Mats*, supra. Such testimony is distinguishable from self-serving general assertions by an employer that in its opinion the employees did not support the union. Compare *Industrial Workers Local 289 v. NLRB*, 476 F.2d 868 (D.C. Cir. 1973); *NLRB v. Little Rock Downtowner*, 414 F.2d 1084 (8th Cir. 1969). Furthermore, testimony concerning conversations directly with the employees involved, as here, is much more reliable than testimony concerning merely a few employees ostensibly conveying the sentiments of their fellows. See *NLRB v. Middleboro Fire Apparatus*, 590 F.2d 4, enfg. 234 NLRB 888 (1978).

Finally, we do not agree with the judge's assessment that these employee statements are unreliable since they were made to supervisory personnel after the Respondent had made known its opposition to the Union. In *Valley Nitrogen Producers*, 207 NLRB 208 (1973), relied on by the judge, only 7 of the respondent's 70 employees expressed dissatisfaction with the union prior to respondent's unlawful refusal to bargain, and the Board specifically declined to pass on the administrative law judge's comments with respect to the reliability of statements made to supervisory personnel. In *Middleboro Fire Apparatus*, supra, the employees involved expressed their sentiments during the course of preemployment interviews. In contrast, here the conversations were initiated in the plant by the employees involved with no hint of a coercive atmosphere. The mere fact that the Respondent had previously expressed the view that it had good relations with its employees and did not need a union, comments not alleged to be unlawful, does not transform these conversations into coerced and false expressions of dissatisfaction. Rather, we believe that there is nothing in the circumstances surrounding the employees' statements here which would negate their reliability as free expressions of employee sentiments.

[11] In view of our finding herein, we need not determine whether the judge correctly found that the demand for recognition on this date was a continuing one. However, we do agree with his conclusion that, as of that date, the Respondent was not yet the successor of Stevens & Thompson.

[12] We note that the judge erred in finding that the Respondent "succeeded to a still current bargaining agreement and with obligations accordingly." See, e.g., *NLRB v. Burns Security Services*, 406 U.S. 272, 280 (1972).

DECISION

STATEMENT OF THE CASE

PHIL W. SAUNDERS, Administrative Law Judge: Based on a charge filed on September 8, 1981, by Local 624, United Paperworkers International Union, AFL-CIO, herein the Union, Local 624, or the Charging Party, a complaint was issued on October 16, 1981, against Sofco, Inc.,[1] herein the Respondent, the Company, or Sofco, alleging violations of Section 8(a)(1) and (5) of the National Labor Relations Act. The Respondent filed an answer denying it had engaged in the alleged matter. The General Counsel and the Respondent filed briefs in this matter.

[1] The name of the Respondent was officially changed from SOP, Inc., to Sofco, Inc., and all formal papers and documents should so reflect.

On the entire record in the case, and from my observation of the witnesses and their demeanor, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

The Respondent is a corporation duly organized under and existing by virtue of the laws of the State of New York. At all times material herein Stevens & Thompson Paper Company, Inc, herein called Stevens, a Delaware corporation, has maintained its principal office and place of business at Greenwich, New York, and has been engaged at this place of business in the operation of a paper products manufacturing facility. Until August 31, 1981, Stevens maintained a like place of business in Mechanicville, New York, herein called the Mechanicville plant, and was also engaged at this facility in the production and sale of paper products.

About August 31, 1981, the Respondent purchased from Stevens its Mechanicville plant, including the assets, building, land, and equipment, and at all times since August 31, 1981, Stevens has ceased to operate the Mechanicville plant. At all times since *September 8, 1981*, the Respondent has operated the Mechanicville plant and has been engaged in manufacturing essentially the same products for substantially the same customers as Stevens had previously. The Respondent has also had as a majority of its employees at the Mechanicville plant individuals who were previously employees of Stevens at this location. Since September 1, 1981, the Respondent has employed substantially the same supervisors as had been employed by Stevens at its Mechanicville plant.[2]

Annually, the Respondent or Stevens, in the course and conduct of its business operations, purchases, transfers, and delivers to the Mechanicville plant goods and materials valued in excess of $50,000 which are transported to this plant directly from States of the United States other than the State of New York.

Annually, the Respondent or Stevens, in the course and conduct of its business operations, manufactures, sells, and distributes at said Mechanicville plant products valued in excess of $50,000, of which products valued in excess of $50,000 are shipped from said plant directly to States of the United States other than the State of New York.

The Respondent or Stevens is and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Union is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

It is alleged in the complaint that, since about September 1, 1981, and continuing to date, the Union has been requesting the Respondent to bargain collectively with it with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective-bargaining representative of all employees of the Respondent in the appropriate unit described below;[3] and that, about September 1, 1981, and at all times thereafter, the Respondent did refuse, and continues to refuse, to recognize and bargain collectively with the Union, notwithstanding that the Union was then, and continues to be, the duly designated exclusive collective-bargaining representative of the employees in the unit described herein. Moreover, the Respondent has refused, and continues to refuse, to meet and negotiate with the Union with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment for the employees in the aforementioned unit.

Prior to August 31, 1981, Local 624 represented a unit of employees working for Stevens at its plants located in Mechanicville and Greenwich, New York, for a period of from 25 to 30 years—in the record the Greenwich plant is also referred to as the Middle Falls plant—and over the years several collective-bargaining agreements have been negotiated between the Union and Stevens covering both its plants, with the most recent one effective November 1, 1980, with an expiration date of October 31, 1983.

The Union's International representative, Edward Olszowy, testified that, around the month of June 1981, the Charging Party was informed by an official of Stevens that the Respondent had an option to buy the Mechanicville plant, which option was to expire on August 20, 1981, but the option was then extended beyond August 20. During this period the Union became aware that the transaction was to be completed about August 31.[4] It appears that the Union then made some tentative arrangements whereby the Mechanicville plant employees could exercise seniority to transfer to the Stevens Greenwich plant or remain at the Mechanicville plant as employees of the Respondent.

It further appears that during the summer of 1981—in June—Richard Almy, Mechanicville plant manager for Stevens and later for the Respondent, informed the Mechanicville employees and union shop steward Lila Birdsinger that the Respondent was interested in buying the Mechanicville plant, and that a representative of the Respondent would be meeting with the Mechanicville employees to inform them of the type of employer Sofco was. Shop steward Birdsinger then asked Plant Manager Almy if he did not think it was proper for a representative of the Union to be at such a meeting and also asked if the Union had been notified, to which questions Almy replied no, they did not need any union there—that it was "just the employees and the new company."

Birdsinger testified that about a week after the above conversation, but still in June, Plant Manager Almy asked her to pass the word along to the Mechanicville employees that there would be a meeting outside the

[2] See Jt. Exh. 1.

[3] The appropriate unit is:
All production and maintenance employees employed by the Respondent at its Mechanicville, New York plant, but excluding all office clerical employees, salesmen, confidential employees, guards, professional employees and supervisors as defined in the Act.

[4] All dates are in 1981 unless stated otherwise.

plant on the so-called bridge, with representatives of the Respondent present, and to instruct the employees to shut off their machines and to be in attendance. Pursuant to the above, the employees assembled at the appointed place where representatives of the Respondent and Stevens were present, including the Respondent's chief representative and consultant, Harold Brown, who spoke to the employees on this occasion. Brown informed them as to the type of employer the Respondent was, and told them that the Respondent was based in Scotia, New York and that he was leaving a list of its employees' names and telephone numbers at the plant and, if any of them wanted to know what kind of employer they were going to work for, all they had to do was to go in the office and secure the names and telephone numbers. No benefits were discussed at this meeting, but Brown assured the employees that Sofco was a good employer. Birdsinger testified that she then opened the current bargaining contract between Stevens and the Union and, referring to the successor clause, asked Brown if he realized that the employees were represented by a union. Brown replied that this "didn't concern him," that he did not want to hear about it, and that it was his feeling that they "didn't need a union."

Brown admitted that Birdsinger may have brought up the subject matter about whether the Respondent would have a union or honor the contract, and that he replied that the Respondent did not have a union and as far as he knew the employees at Scotia did not feel they needed one. I have credited Birdsinger's version of what was said at this meeting, but, under either version, it is clear that on this occasion Brown made known to the assembled employees that the Respondent did not have nor want a union.

About August 24, a Monday, Plant Manager Almy informed Birdsinger that the Respondent had chartered a bus to take all the Mechanicville employees on a tour of the Respondent's Scotia plant; that on the day of the tour the employees would work until noontime and then board the bus to go on the tour; that the tour would be on Thursday, August 27; and that on the next day, Friday, the employees would be asked to make out applications. When Birdsinger questioned Almy as to why she had to make out an application when she already had a job, Almy merely replied this is what had to be done.

The record shows that the scheduled tour took place on August 27, after which the employees were given job application blanks and told to fill them out and wait for interviews. Birdsinger was interviewed by Brown and Almy, and, after attempting to persuade her to transfer to the Stevens plant at Greenwich, Brown passed out a list of the benefits the Respondent intended to provide, which were less, according to Birdsinger, than those contained in the current contract. Brown then informed the employees that the Respondent would be placing employment ads in the local paper for Mechanicville plant jobs, but that the ads were not for workers to replace present employees—they were only to fill the positions of Mechanicville employees who chose not to remain.

The next day, August 28, Almy approached Birdsinger during the morning and asked her if she was going to accept a job at the Mechanicville plant, and she replied she had not made up her mind. Later during the day Birdsinger went to the bridge and met with International representative Olszowy and Local 624's president, Daniel Langlois. It appears that this meeting took place so the union representatives could pass on whatever information they had gathered to shop steward Birdsinger.

Also on the afternoon of August 28, Brown told Birdsinger that she had gone beyond the number of hours they said she would have, and now she must make up her mind whether or not she wanted to accept a position with the Respondent. When Birdsinger said it was a big decision to make, Brown replied that she had been given enough time to think it over, and that she either accepted or else. When Birdsinger asked, "Or else, what?" Brown said, "Or else you don't have a job." She then signed on for the job. On this occasion Birdsinger also asked Brown if there was a meeting scheduled between the Union and Brown for Tuesday since she had been informed at noontime that the Union was trying to set up a meeting, and Brown replied he guessed so—they (union people) were at the plant during the morning but made no appointment, and, whatever they had on their mind, he did not know and did not care.

It appears from this record that Brown had, in fact, agreed to a meeting with the Union, and it was to take place on September 1.[5]

On September 1, Olszowy, Langlois, and Birdsinger went to the Mechanicville plant and met with the Respondent's representative Brown, Almy, and Eric Kippert, who is currently general manager of the Mechanicville plant. Olszowy testified that at this meeting he informed Brown that it was his understanding the Respondent had purchased the plant, and Brown replied yes, effective August 31. Olszowy further testified, "I told him we are the certified bargaining agent. And I've [sic] asked at that time if he would like to continue the current labor agreement. He said no. I asked him if he wanted to negotiate a new one. He said no. I asked him if he recognized the Union. He said no."

Birdsinger testified that at this meeting on September 1 Olszowy asked, "We're here wondering if your people want to recognize the union, if you want to accept the contract as it is or if you want to draw up a new one," to which Brown replied, "No, no, no" and then stated that he had "good relationships with my employees. I don't need a union," and also stated that Sofco "only bought the building and the machinery and not the employees."

Langlois, president of Local 624, testified that on September 1 Olszowy asked Brown if he would recognize the Union, if he would recognize the contract, and if he wanted to renegotiate a contract, to which questions Brown replied, "No, no, no, I don't think so." Langlois also testified that at this time Brown inquired of the union representatives if the Union wanted to invest money in the Company, but he replied that such would be illegal.

[5] The Mechanicville plant was shut down for certain repair work the week beginning Monday, August 31, and Birdsinger and the other employees asked for and received layoff slips from Stevens. Temporary shutdowns of this kind were normal.

At the end of this meeting there was also some discussion about a future meeting, and it appears that Brown then stated it was probably all right, but he did not see any point in it after Olszowy had said something to the effect that he would be getting back in touch.

The Respondent produced testimony through Harold Brown to the effect that, at the meeting in question on September 1, he was asked by Olszowy, "Do you want to recognize the Union?" and he replied, "I don't think so." Brown testified that he looked on this request as "exploratory" and a "feeling out" on both sides, and he stated that on this date he did not know what the employee complement would be at the Mechanicville plant, he did not feel he had authority in this matter without consulting with the president of Sofco, and he was also aware of the employee dislike for the Union.[6]

Plant Manager Almy testified that he was at the June meeting on the bridge when Brown talked to the employees, as aforestated, and since that time he had received indications from employees of their dissatisfaction with and lack of support for the Union. He was told by certain employees that with the change in ownership they could not get away from the Union and be on their own. A lot of them "just plain wanted out," and he had conveyed this information to Brown prior to the takeover of the Mechanicville plant by Sofco. Almy stated that at the meeting on September 1 the union representative asked the Sofco representatives if they wanted to honor the contract or if they wanted to negotiate a new one, and he took this as a "feeling out" approach.

The Respondent's general manager, Eric Kippert, testified that at the meeting on September 1 union representative Olszowy asked them, "do you want to recognize the Union?" and Brown replied, "I don't think so." Kippert stated that by this question he "got the impression [Olszowy] was fishing," but that Brown's reply "left the door open."

The record reveals that by letter dated September 25 the Union again requested that the Respondent recognize Local 624 as the bargaining agent, but that such request was denied by a letter from the Respondent to the Union dated October 8 on the basis that Sofco had a good-faith doubt as to the Union's majority status among the employees at its Mechanicville plant.

Counsel for the Respondent argues that Sofco did not employee a majority of its employees from the former Stevens Mechanicville bargaining unit until it commenced operations on September 8; that, during the prior week, the Mechanicville plant was shut down and, according to Brown, Sofco's consultant at the plant, still under the operational responsibility of Stevens; and that on September 1 and throughout that week, Sofco had no way of knowing how many employees from the Stevens Mechanicville work force would be joining it on September 8. Moreover, the uncertainty was so great that Sofco, in order to be sure that it would be able to fill whatever vacancies remained of the 25 "plus or minus two" positions they would need to fill in its anticipated work force, took in over 200 applications and interviewed 106 applicants during the last week in August, and it did so even after job offers had been made to the Stevens Mechanicville employees.

Counsel for the Respondent further argues that the crucial date under consideration here is September 1 because this is the date on which the General Counsel and the Union allege that the initial demand for recognition was made, and, accordingly, the sucessorship status of the Respondent on that date is a pivotal issue; that, under *Burns* and its progeny, if it cannot be said that on September 1 it was "perfectly clear that the new employer plan[ned] to retain all of the employees in the unit" or that the new employer "ha[d] hired his full complement of employees" (*NLRB v. Burns Security Services*, 406 U.S. 272, 294–295 (1972)), then the Respondent was not a successor employer on that date and no duty to bargain attached at that point.

The Respondent duly acknowledged as aforestated, that it has been a successor employer to Stevens since September 8 when it began operating the Mechanicville plant and engaging in essentially the same business operations at the same location as Stevens with a majority of its employees at the Mechanicville plant having been previously employees of Stevens at the same location. However, counsel for the Respondent maintains that September 1 is the crucial date, and that at *this time* Sofco had not employed a majority of the predecessor's (Stevens') employees.

Under circumstances, as here, where the new employer continues operations substantially unchanged and the bargaining unit continues intact, the Board has traditionally held that the new employer succeeds to the predecessor's bargaining obligations when a majority of the new employer's work complement is determined to have come from the predecessor's bargaining unit.[7]

I am in agreement with the Respondent that on September 1 a *majority* of Sofco's work force had not as yet been employed from the predecessor's bargaining unit, and the clearest evidence that the Respondent had not as yet hired its full complement of employees by September 1 is Respondent's Exhibit 1—Sofco's weekly payroll register for the pay period ending on September 2, which reflects pay for a total of only seven former Stevens employees two of whom, Almy and Quackenbush, were supervisory and office employees.

However, the Respondent's Mechanicville payroll for the week ending September 9 shows 1 supervisor out of 2 office clericals and all 24 unit employees as former Stevens employees with all but 1 of the unit employees being union members.[8] The Respondent's payrolls for the weeks ending September 16, 23, and 30 show, respectively (minus or plus 1), 21 out of 24, 22 out of 25, and 21 out of 28 unit employees as former Stevens employees, with all but 1 former Stevens unit employee being union members.[9]

[6] Brown testified that in early October he had seen a petition dated September 28 from the employees expressing their desire to disassociate themselves from Local 624. See R. Exh. 2.

[7] See *United Maintenance Co.*, 214 NLRB 529 (1974).

[8] See G.C. Exh. 3. The payroll includes September 3 and 4, on which dates six former Stevens employees were called in to do cleanup work for Sofco with all being union members at the time.

[9] See G.C. Exhs. 4, 5, and 6.

From this record it is clear that on September 8, when Sofco actually started the operation of the Mechanicville plant, a majority of the work force of its predecessor had been hired, and admittedly so. Consequently, I find that the Respondent succeeded to the bargaining obligations of Stevens on and after September 8 when a majority of its work force was composed of former Stevens unit employees, and that its duty to bargain with the Union then attached and became perfected.[10]

As indicated previously herein, the Respondent argues that September 1 is the crucial date, and that the Union's purported demand for recognition on that date was premature. However, it appears to me that the Union's initial request for recognition on September 1 was in the nature of a live and continuing demand, which was still outstanding and then became activated on September 8 when Sofco started its operations and had hired a majority of Stevens unit employees—in fact, it had hired virtually all of them.

Counsel for the Respondent argues that the Union's statements on September 1 did not communicate a sufficiently clear request to indicate a desire to be recognized by and to bargain with the Respondent—the words used by Olszowy at the September 1 meeting were not such as to reasonably and clearly convey an understanding that the Union was requesting recognition and bargaining; that Olszowy was heard to preface his references to recognition and negotiation with the precatory words "want to"—do you want to do this, do you want to do that, do you want to do the other thing; and that such words did not constitute a demand. Further, argues counsel for the Respondent, the final proof of this fact came less than 1 month later when the Union, recognizing the inadequacy of its earlier effort for purposes of legally communicating a recognition demand, sent Brown its formal demand letter of September 25, and, unlike the "shadow boxing" which took place earlier Olszowy, this time, was very clear and direct in his request. Put to him in this manner, Brown then understood that Olszowy was requesting recognition.

It has been well established by the Board that a request to bargain need not be precisely worded as long as it is clearly implied that the request is for bargaining.[11]

In the instant case it appears to me that the Union's initial request to bargain on September 1 was sufficiently clear, and especially so under the circumstances here where we have a successor involved.[12] In the final analysis, the Union in the instant case not only requested recognition, but also then offered the alternative of either abiding by the existing contract or negotiating a new one. As pointed out, Brown alluded in his testimony to the fact that under these circumstances he would have had to check with the Respondent's president before granting recognition, but this record shows that he never conveyed in any manner this message to the union representatives. Brown further testified that he thought there also had to be an election before he could grant recognition. This, of course, is not the case, and Brown's belief to the contrary cannot be used to render ineffective an otherwise valid request.

There is further argument by the Respondent to the effect that Brown's words on September 1 did not constitute a refusal to recognize the Union, and that they were not understood by Almy or Kippert to be a refusal of anything—as General Manager Kippert put it, "I think he left the door open."

While management representatives may not have understood the replies by Brown to be a refusal, it appears clear to me that all reasonable inferences are to the contrary, and, even with the utterance on one occasion by Brown of "I don't think so," I find the evidence insufficient to remove his replies from the clear and unmistakable category of a rejection to recognize and bargain with the Union.

I turn now to the contention that any refusal by the Respondent to recognize and bargain with the Union was based on the Union's lack of majority support or on a good-faith doubt of the Union's majority support.

The Respondent produced testimony through Plant Manager Almy to the effect that, after the meeting in June, he received indications from employees of their dissatisfaction with the Union. In this regard Almy testified, "At that time there was rumors that the Company might be sold, might be closing down or whatever. So then everybody got talking, well, maybe this is our chance to do away with the union, get away from the union, and be on our own. If Sofco does purchase it, we could make out better without a union. And then there was a lot of talk about that they were dissatisfied with the present union and that there was a lot of them that just plain wanted out."

Almy stated that he heard these comments regarding the Union almost every day over the 2 or 3 months preceding September 1; and, on reviewing the names of employees which appear on General Counsel's Exhibit 3, the payroll sheet covering the Respondent's first 2 days of full operation, he testified that, out of the 24 bargaining unit employees appearing on that list, the only one from whom he did not hear these kind of comments was Lila Birdsinger, the shop steward. Based on what he heard from all the rest, it was clear to him that the Union had no support. While testifying, Almy also gave the names of several employees who had informed him of their discontent with the Union.

Almy further testified that, in addition to the comments made directly to him, he also observed posters or signs hanging in the plant saying such things as "count down 30 days to go. 25 days to go till the end of the union. All pertaining to the union," and that these signs began appearing at the stated intervals prior to September 1, and made specific reference to the number of days remaining before that date.

Manager Almy testified that the employees were also "picking on" Birdsinger in clear disdain for her role as shop steward and that they were "going around her" in attempting to deal with management during the summer

[10] See *Stewart Granite Enterprises*, 255 NLRB 569 (1981).

[11] See *Cottage Bakers*, 120 NLRB 841 (1958).

[12] In *Western-Davis Co.*, 236 NLRB 1224 (1978), the union there made no explicit recognitional demand until August, but nevertheless the Board agreed that the successor's duty to recognize and bargain arose on April 1 coincident with its establishment of a compelement in unit categories of whom over one-half had come from the predecessor.

of 1981. He stated that all this activity protesting the Union was made known to Brown prior to September 1.

Counsel for the Respondent points out that the ultimate confirmation of the Union's total lack of support among the employees at the Mechanicville plant came in the form of a petition signed by all but one of them dated September 28, 1981, which stated: "WE THE UNDERSIGNED, WISH TO DISASSOCIATE OURSELVES WITH LOCAL 624 OF THE UNITED PAPER WORKERS INTERNATIONAL UNION, AFL-CIO."[13] This petition was first seen by Brown a few days afterwards on October 2 "plus or minus two." Counsel argues that with this petition in hand it was clear that the Union lacked majority support at the time of the Respondent's one and only refusal to recognize and bargain with it—the letter of October 8 from its attorney to Olszowy, as aforestated.

As pointed out, the Respondent's good-faith doubt is based primarily on the testimony of Almy, who worked as plant manager for Stevens and continued in that capacity for the Respondent. Almy testified that, after the June bridge meeting where Brown spoke to the assembled employees, everybody in the plant got to talking that maybe this was their chance to do away with the Union and be on their own, and he stated that he heard comments like this from all the employees except Birdsinger. However, on cross-examination when the General Counsel attempted to elicit testimony from him on what he had actually heard from each employee, Almy exhibited a great deal of difficulty with specifics. With regard to employee J. A. Perry, Almy stated that he could not tell the day or time of his conversation with him, that his conversation was "somewhere along the lines of well, it won't be long now and we can get rid of this lousy union, something to that effect. I can't tell you the exact words." Almy testified that he could not recall the date of his conversation with employee L. J. Peters, but stated that Peters was always against the Union since he transferred from Greenwich to Mechanicville and that he may have spoken to him prior to June. Almy expressed the same difficulty in remembering any specifics with respect to the other employees he allegedly spoke with, but then agreed that in June all the employees have him the same response in relating their feelings about the Union—that they had only "x amount of days to go" before the takeover by Sofco. He finally concluded that 95 percent of the employees spoke to him in June about this matter, but then on redirect testified that 95 percent of the conversations occurred throughout "several months."

What is important and controlling in this phase of the instant case is the initial testimony and admission by Almy that these employee remarks indicating dissatisfaction with the Union started *after* Brown had talked with the Mechanicville employees at the plant in *June* telling them that he had good relationships with his employees and that Sofco did not need a union, as previously detailed herein, and, even though Brown's version of this portion of the conversation differs in what he contends he said to the employees, either version of the remarks reveals that the chief representative and consultant for Sofco clearly expressed to the predecessor's employees on this occasion that the successor was not at all favorably inclined towards unions. Thus, having heard of the Respondent's opposition to the Union, it is little wonder that the employees desiring to be retained by the Respondent would make some antiunion statements. It is also noted that the Respondent produced no employee testimony concerning these antiunion remarks, nor did it produce any other corroborating testimony, nor was there evidence of any spontaneous employee attempt to dislodge the Union.[14] Moreover, neither the signs allegedly posted in the plant nor Birdsinger's alleged problems as shop steward (both allegations uncorroborated) rose to the level of such a movement.

I am in agreement that the Respondent's "objective evidence of loss of majority" is the same type of unspecific testimony, uncorroborated by any management or employee witnesses, that was rejected in *MRA Associates*, 245 NLRB 676 at 678 (1979). As stated in *Valley Nitrogen Producers*, 207 NLRB 208 at 214 (1973):

> Such evidence of employee sentiment is unreliable, since an employee, when engaging in conversation with supervisory personnel regarding his union sentiments, will tend to make statements he believes management would like to hear.

The foregoing reasoning is especially applicable here where the employees had been made aware of the Respondent's feelings towards the Union at the June meeting.

Indeed, as noted by the General Counsel, the alleged statements made herein for the benefit of their prospective employer are similar to those in *Middleboro Fire Apparatus*, 234 NLRB 888 (1978), enfd. 590 F.2d 4 (1st Cir. 1978). *Middleboro* involved a successor employer who was claiming doubt of the union's majority based on statements made by the predecessor's employees during interviews for employment by the successor, about which it was said at 894:

> Statements made by employees during the course of an interview with a prospective employer that they approve of his unqualified position that he has no contract and is not obligated to bargain with the Union claiming to represent them are not voluntary, uncoerced expresssions of employee sentiment upon which their employer can rely in asserting a goodfath doubt of an incumbent union's majority status.

The rationale behind all the foregoing bases is clear. If the Board accepted statements such as those proffered by

[13] R. Exh. 2.

[14] All facts found herein are based on the record as a whole and on my observation of the witnesses. The credibility resolutions herein have been derived from a review of the entire testimonial record and exhibits with due regard for the logic and probability, the demeanor of the witnesses, and the teaching of *NLRB v. Walton Mfg. Co.*, 369 U.S. 404 (1962). As to those witnesses testifying in contradiction of the findings herein, their testimony has been discredited either as having been in conflict with the testimony of reliable witnesses or because it was in and of itself incredible and unworthy of belief. *All testimony has been reviewed and weighed in the light of the entire record.*

Manager Almy as proof of a reasonably based doubt, then the employer could escape its bargaining obligation by simply having a supervisor testify, without corroboration or other evidence, that all of the employees told him they did not want a union. That practice would obviously create an intolerable situation, and certainly not promote stable bargaining relationships.

The Respondent also introduced into evidence a document or petition with names on it dated September 28 that Brown testified he received from Almy on October 2 or a couple of days before or after that date (R. Exh. 2), and, although General Manager Almy testified, he was not asked about this document. Thus, there is no evidence in the record as to who circulated it, how it came into existence, how the Respondent acquired it, or whether any of the signatures on it are authentic. As also pointed out, even if this petition had some possible evidentiary value, it could not be relied on since the earliest date it was received by any official of the Respondent would be September 30, and by that time the Respondent had already refused to bargian with the Union. Moreover, in the instant case the bargaining contract here in question does not expire until October 1983, and it has long been recognized that the duty to bargain is not affected by a union's loss of majority support during the term of the contract, and here, of course, Sofco has succeeded to a still current bargaining agreement with obligations accordingly.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommended that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local 624 is a labor organization within the meaning of Section 2(5) of the Act.

3. By engaging in the conduct described and detailed in section III, above, the Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

4. The unit set forth herein constitutes a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5. At all times material herein, the Union has been the exclusive collective-bargaining representative of the employees in the described unit set forth herein.

6. The Respondent is a legal successor for labor relations purposes to Stevens in the operation of the Mechanicville plant.

7. Since about September 8, 1981, and at all times thereafter, the Respondent has failed and refused to recognize and to bargain collectively in good faith with the Union as the exclusive representative of the Respondent's employees in the described unit herein, and thereby has engaged, and is engaging, in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

[Recommended Order omitted from publication.]